

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Equal Employment Opportunity Commission,	:	Civil Action No.:2:10-cv-03095-JMV-DEA
Plaintiff,	:	<u>ECF Filing</u>
v.	:	
FAPS, Inc.,	:	
Defendant.	:	
	:	

CONSENT DECREE

This cause of action was initiated on June 17, 2010 by the Equal Employment Opportunity Commission ("EEOC"), an agency of the United States Government, to correct unlawful employment practices on the basis of race, and to provide appropriate relief to a class of potential and actual applicants who were adversely affected by such practices. Specifically, EEOC alleged that FAPS, Inc. violated Title VII of the Civil Rights Act of 1964, as amended ("Title VII") and engaged in an ongoing pattern or practice of race discrimination against African Americans in recruitment and hiring, by relying almost exclusively on word-of-mouth recruiting practices that deterred and prevented African Americans from applying and resulted in FAPS, Inc.'s refusal or failure to hire African American applicants. EEOC also alleged that FAPS, Inc. refused to hire qualified African Americans who did apply for available positions and instead hired less qualified or similarly qualified non-African American applicants, and falsely told a number of African-American applicants that no positions were available when, in fact, FAPS, Inc. was hiring non-African American applicants. EEOC additionally alleged that FAPS, Inc. violated the Americans with Disabilities Act ("ADA") by making improper preemployment disability-related inquiries of applicants.

The parties desire to settle this action, and stipulate to the entry of this Decree as final and binding between the parties and FAPS, Inc.'s parent organizations, officers, agents, successors, assigns, full or partial purchasers, subsidiaries, affiliates and any other corporation or other entity into which FAPS, Inc., may merge, or with which FAPS, Inc. may consolidate.

The terms of this Decree represent the full and complete agreement of the parties. The parties have agreed that this Decree may be entered into without findings of fact and conclusions of law having been made and entered by the Court.

No waiver, modification or amendment of any provision of this Consent decree shall be effective unless made in writing, approved by all parties to the Consent Decree and approved or ordered by the Court.

The Court finds that it has jurisdiction over the subject matter of this action and the parties for purposes of the action, entry of the Consent Decree, and all proceedings related to the Consent Decree.

The Court, having examined the terms and provisions of the Consent Decree, further finds that it is reasonable and just in accordance with the Federal Rules of Civil Procedure and Title VII.

The Court further finds that entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of the parties, those for whom the EEOC seeks relief, and the public interest.

In consideration of the mutual promises and agreements contained in this Decree, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and it is therefore ORDERED, ADJUDGED AND DECREED as follows:

A. GENERAL PROVISIONS

1. This Consent Decree resolves the issues raised in EEOC's Complaint in this case and the issues raised in EEOC Charge Number 524-2008-00149, which served as the jurisdictional prerequisite in this case. This Consent Decree does not resolve any charge of discrimination currently pending before EEOC, or any charge that may be filed in the future, other than Charge Number 524-2008-00149. EEOC reserves all rights to proceed with any matters not covered in this Consent Decree including but not limited to the investigation and litigation of any pending or future charges or claims against FAPS, Inc.

2. The Court has jurisdiction of the subject matter of this action and over the parties, venue is proper, and all administrative prerequisites have been met.

3. FAPS, Inc. will not contest the validity of this Consent Decree.

4. FAPS, Inc. will not contest the jurisdiction of the United States District Court to enforce this Consent Decree and its terms, or the right of EEOC to bring an enforcement action or proceeding upon the breach of any term of this Consent Decree by FAPS, Inc.

5. Before any merger, sale, consolidation, transfer of ownership, or corporate reorganization, and in order to ensure full and continuous compliance with the terms of this Consent Decree, FAPS, Inc. will provide written notice of this lawsuit, together with a copy of the Complaint and this Consent Decree, to any actual or potential purchaser of its business, or any portion of the business or its assets, and to any other potential purchaser, successor, assign, corporation or entity with which FAPS, Inc. may merge or consolidate. FAPS, Inc. will also provide written notice to EEOC 30 calendar days before any sale, assignment, succession, acquisition, merger, or consolidation affecting FAPS, Inc.

6. By entering into this Decree, FAPS, Inc. does not admit the allegations of the Complaint or that it has any liability for the conduct alleged therein.

7. This Decree shall apply to all of FAPS' current and future work locations and facilities.

B. INJUNCTIONS

8. FAPS, Inc., and its officers, managers, agents, successors, assigns, full or partial purchasers, subsidiaries, affiliates and any other corporation or other entity into which FAPS, Inc. may merge, or with which FAPS, Inc. may consolidate, are enjoined from refusing to hire any individual because of the individual's race.

9. FAPS, Inc., and its officers, managers, agents, successors, assigns, full or partial purchasers, subsidiaries, affiliates and any other corporation or other entity into which FAPS, Inc. may merge, or with which FAPS, Inc. may consolidate, are enjoined from:

- a. Relying on word-of-mouth recruiting as the primary means of recruiting and hiring job applicants;
- b. Discouraging African-American applicants and prospective applicants from completing the employment application process, including but not limited to
 - i. failing to advise African-American applicants who do not hold a Waterfront Commission license that they must obtain a license from the Waterfront Commission in order to be employed by FAPS, Inc. and failing to provide African-American applicants with a sponsorship letter and instructions on how to apply for and obtain a license from the Waterfront Commission;
 - ii. advising African-American applicants or potential applicants that FAPS, Inc. does not have any job openings when FAPS, Inc. in fact does have job openings or is otherwise sponsoring or hiring job applicants;
 - iii. advising African-American applicants or potential applicants that the Waterfront Commission is unlikely to issue a license to persons with a criminal conviction record.

- c. Asking applicants for entry-level positions to list all languages in which they are fluent, other than English.
- d. Making pre-hire inquiries about the physical, mental, or medical condition(s), limitation(s), and/or disability of job applicants.

10. FAPS, Inc. and its managers, officers, agents, and any other person or entity acting on its behalf, are hereby enjoined from failing to make, keep, preserve, and retain all applications, application materials (*e.g.*, resumes, letters, inquiries, e-mails), and communications between FAPS, Inc. and any third party (*e.g.*, job-posting website, newspaper) regarding recruitment efforts or advertisements for employment, and any other materials which reflect information provided to or from FAPS, Inc. regarding job applicants (*e.g.*, sponsorship letters, communications to or from OneStop Programs and/or the Waterfront Commission).

11. FAPS, Inc., its officers, managers, agents, successors, assigns, full or partial purchasers, subsidiaries, affiliates, and any other corporation or other entity into which FAPS, Inc. may merge, or with which FAPS, Inc. may consolidate, are hereby enjoined from retaliating against any individual because that individual: (a) is a beneficiary of this Consent Decree; (b) has provided information, assistance, or participated in any other manner in the investigation or litigation of this matter; or (c) has engaged in protected activity under Title VII.

12. FAPS, Inc. will make diligent, good faith efforts to recruit, sponsor, and hire qualified African Americans. FAPS, Inc. shall at all times use the same criteria for hiring African Americans as are used when hiring non-African Americans. FAPS, Inc.'s efforts to increase its hiring of qualified African-American applicants shall include:

- (1) Advertising available positions in publications and media targeted to the African-American community, particularly in Essex and Union Counties;
- (2) Participation in at least one job/career fair annually in Essex and Union Counties.

13. Within 30 calendar days of the entry of this Consent Decree, FAPS, Inc. will solicit applications from graduates of vocational and technical schools in Essex, Union, and Hudson Counties that have automotive programs in an effort to recruit African Americans. Every six months, FAPS, Inc. will send to EEOC all communications and agreements between it and the schools detailing the partnership arrangements with the schools.

14. Within 30 calendar days of the entry of this Consent Decree, FAPS, Inc. will adopt, implement, and maintain a recruiting plan, attached as Exhibit A, to recruit African Americans and to hire qualified African-American applicants, including a plan for job announcements, advertisements in print, radio, local cable television, internet, and other media sources, and outreach to community organizations that are likely to reach qualified African-American applicants to inform them of job opportunities at FAPS, Inc., and including a plan to advise applicants on how they can obtain a Waterfront Commission license for positions that require such a license.

15. FAPS, Inc. will maintain complete and accurate records of all efforts to recruit, sponsor, and hire qualified African-Americans, including at a minimum (a) the methods used to recruit applicants; (b) a list containing the name, address, telephone number, social security number, and race of all applicants, whether or not the applicant was provided a sponsorship letter and subsequently hired, and reasons therefor, date of application, dates of employment with FAPS, Inc., names and job titles of all persons conducting each interview and making decisions on whether or not to sponsor and/or hire a particular applicant; (c) job applications of all applicants; (d) instructions provided to applicants on how to obtain a Waterfront Commission license, if applicable, including a copy of the sponsorship letter provided to each applicant; (e) job descriptions and qualifications for the positions filled; (f) interview questions and answers,

and all records, notes and documents concerning interviews. Within three months of the entry of this Consent Decree, and every three months thereafter, FAPS, Inc. will provide the list set forth in subparagraph (b) to EEOC as a Microsoft Excel spreadsheet in electronic .xls format, and will provide the other records to EEOC within 7 calendar days of a request for such records by EEOC.

C. APPOINTMENT OF EQUAL OPPORTUNITY COORDINATOR AND TOLL-FREE NUMBER FOR REPORTING COMPLAINTS

16. Within 21 calendar days of the entry of this Consent Decree, FAPS, Inc. will appoint an Equal Employment Opportunity Coordinator (EEO Coordinator), a person approved by EEOC, with experience in human resources and having specialized knowledge of federal laws prohibiting employment discrimination. The EEO Coordinator will have day-to-day responsibility for:

- a. ensuring that FAPS, Inc. complies with this Consent Decree and complies with federal laws prohibiting employment discrimination;
- b. overseeing FAPS Inc.'s recruitment plan, its partnership with vocational schools, and its efforts to recruit, sponsor, and hire qualified African-American applicants ;
- c. receiving, investigating, and resolving reports, complaints or allegations of discrimination, and/or retaliation;
- d. arranging training of all supervisors, managers, and employees as required by this Consent Decree;
- e. ensuring that all notices and postings required by this Consent Decree are issued and maintained as required by this Consent Decree;
- f. maintaining records required by anti-discrimination laws and this Consent Decree and forwarding reports and records to EEOC as required by this Consent Decree;
- g. imposing or recommending appropriate discipline on supervisors, managers, or employees who are found to have engaged in discrimination or retaliation;

- h. regularly attending training, and taking other steps, including membership in professional organizations, to keep abreast of developments in federal anti-discrimination laws.

17. FAPS, Inc. will give its full cooperation to the EEO Coordinator in the performance of the EEO Coordinator's responsibilities under this Consent Decree and will pay all costs, fees and expenses of the EEO Coordinator. FAPS, Inc. will give the EEO Coordinator full access to FAPS, Inc.'s officers, managers, supervisors, forepersons, employees, vendors, contractors, and documents and records related to the performance of the EEO Coordinator's responsibilities under this Consent Decree.

18. If the person or entity appointed as the EEO Coordinator ceases to act as EEO Coordinator for any reason, FAPS, Inc. will provide written notice to EEOC of the need to designate a new EEO Coordinator, state the reasons why the EEO Coordinator is ceasing to act in that role, and, subject to EEOC approval, identify another qualified person or entity who is knowledgeable and experienced in laws prohibiting employment discrimination and in appropriate investigative practices and techniques, to assume the role of EEO Coordinator. FAPS, Inc. must provide notice to EEOC within 7 calendar days of the day that FAPS, Inc. learns that the person or entity appointed as the EEO Coordinator is ceasing to act as EEO Coordinator. If EEOC does not approve the appointment of the proposed new EEO Coordinator, FAPS, Inc. will, within 14 calendar days of learning of EEOC's decision, immediately propose a new EEO Coordinator for EEOC approval.

19. Within 30 calendar days of the entry of this Consent Decree, FAPS, Inc. will establish a confidential, toll-free "hot-line" to receive reports of suspected discrimination or retaliation. The telephone number is _____. The telephone will be answered Monday through Friday from 8:00 a.m. until 5:00 p.m. by the EEO Coordinator and at other times will

have an answering device to record incoming messages. The hot-line telephone number will be included in all relevant FAPS, Inc. policies and procedures, and will be posted at FAPS, Inc.'s headquarters and at all its job sites in places that are physically and visually accessible to employees and applicants.

D. POLICIES AND PROCEDURES

20. Within 30 calendar days of the entry of this Consent Decree, FAPS, Inc. will adopt, implement and maintain written policies and procedures prohibiting discrimination in all phases of the employment process including recruiting, sponsorship, hiring, retention, and promotion. The written policies and procedures must also contain anti-retaliation policies and procedures. The written policies and procedures will contain policies and procedures for receiving, investigating and resolving reports, complaints or allegations of discrimination, and retaliation and provide for a toll-free number, _____, that individuals can call to report suspected discrimination, and/or retaliation to the EEO Coordinator. The written policies and procedures will specify the duties and responsibilities of the EEO Coordinator and the obligation of FAPS, Inc., its officers, managers, supervisors, forepersons, agents and employees to give their full cooperation to the EEO Coordinator in the performance of the EEO Coordinator's duties under this Consent Decree. The written policies and procedures will include a disciplinary policy that will provide for appropriate discipline of any manager, supervisor, or employee who violates these policies. A copy of the written policies and procedures is attached as Exhibit B. The attachment of FAPS, Inc.'s policies and procedures to this Decree is not a representation by EEOC that FAPS, Inc. has been or is compliant with federal anti-discrimination laws.

21. Within 30 calendar days of the entry of this Consent Decree, FAPS, Inc. will distribute a copy of Exhibit B to all of its employees and job applicants. FAPS, Inc. will distribute a copy of the written policies and procedures to all new employees at the time such individuals start their employment with FAPS, Inc. and will distribute a copy of the written policies and procedures to all applicants at the time such individuals indicate that they are interested in applying for a position with FAPS, Inc. FAPS, Inc. will redistribute the written policies and procedures to all employees annually on the anniversary date of the entry of this Consent Decree.

22. Within 45 calendar days of the entry of this Consent Decree, FAPS, Inc. will send EEOC written verification that FAPS, Inc. has distributed a copy of Exhibit B to all of its employees and applicants. Annually, on the anniversary date of the entry of this Consent Decree, FAPS, Inc. will send EEOC written verification that these written policies and procedures have been given to all new employees and applicants and redistributed annually to all employees.

E. NOTICES AND POSTINGS

23. Within 14 calendar days of the entry of this Consent Decree, FAPS, Inc. will conspicuously post and maintain, at FAPS, Inc.'s headquarters and at all job sites, in places that are physically and visually accessible to all of FAPS, Inc.'s employees, applicants, and potential applicants, a copy of Exhibit C.

24. Within 14 calendar days of the entry of this Consent Decree, FAPS, Inc. will conspicuously post and maintain a copy of all EEO posters as required by federal law, at FAPS, Inc.'s job sites and buildings, in places that are physically and visually accessible to all of FAPS, Inc.'s employees, applicants, and potential applicants.

25. Within 14 calendar days of the entry of this Consent Decree, FAPS, Inc. will conspicuously post and maintain, at all FAPS, Inc.'s facilities, job sites and buildings, in places that are physically and visually accessible to all of FAPS, Inc.'s employees, applicants, and potential applicants a copy of the remedial Notice of Lawsuit and Settlement (Notice), a copy of which is attached as Exhibit C, printed on EEOC letterhead, and will provide a copy to all applicants and potential applicants.

26. Within 14 calendar days of the entry of this Consent Decree, FAPS, Inc.'s owners and chief executives will send a memorandum to all employees and applicants emphasizing FAPS, Inc.'s commitment to abide by all federal laws prohibiting employment discrimination, including laws prohibiting race discrimination, and retaliation. The memorandum will also introduce the EEO Coordinator and explain the duties of the EEO Coordinator. The memorandum will include the telephone number that FAPS, Inc. has established to report or complain of suspected discrimination, or retaliation. FAPS, Inc. will distribute a copy of the memorandum to all new employees at the time such individuals become employees, and to all applicants at the time such individuals indicate that they are interested in applying for a position with FAPS, Inc., and will conspicuously post and maintain a copy of the memorandum at FAPS, Inc.'s offices, job sites, and buildings in places that are physically and visually accessible to all of FAPS, Inc.'s employees and applicants. A copy of the memorandum is attached as Exhibit D.

27. Within 14 calendar days of the entry of this Consent Decree, FAPS, Inc. will send written verification to EEOC that the EEO poster, policies and procedures, remedial Notice, and memorandum by FAPS, Inc.'s owners and chief executives have been posted and distributed as required by this Consent Decree.

F. TRAINING

28. Within 90 calendar days of the entry of this Consent Decree, and thereafter on an annual basis, FAPS, Inc. will provide all of its employees with 3 hours of training in federal laws prohibiting discrimination in employment, with a special emphasis on laws prohibiting race discrimination, and retaliation. FAPS, Inc. shall provide 14 calendar days' written notice to EEOC of the time, date, and location of such training and FAPS, Inc. understands that EEOC has the right to attend any training conducted by FAPS, Inc. pursuant to this Consent Decree. The training must address FAPS, Inc.'s policies and procedures prohibiting employment discrimination, including policies and procedures prohibiting race discrimination, and retaliation, and describe the methods for reporting incidents of suspected race discrimination, and retaliation. The training must also address how FAPS, Inc. will investigate reports, complaints, or allegations of suspected race discrimination, and retaliation, and FAPS, Inc.'s policies and procedures for resolving such reports, complaints or allegations. The training must identify the EEO Coordinator, explain the responsibilities of the EEO Coordinator, and identify the telephone number that can be used to report suspected incidents of race discrimination, or retaliation. FAPS, Inc. must also provide this training to all new employees within 14 calendar days of hire. The training will be conducted by a third party instructor approved by EEOC, an outside vendor skilled in providing such training. The content of the training will first be submitted for EEOC approval. FAPS, Inc. must maintain records identifying the name and job title of attendees at each training session and must provide a copy of such records to EEOC within 7 calendar days of each session.

29. Within 45 calendar days of the entry of this Consent Decree, and then on an annual basis, FAPS, Inc. will provide all of its officers, managers, supervisors, EEO Coordinator and persons having human resources or hiring functions with no fewer than 8 hours of training in

laws prohibiting employment discrimination. FAPS, Inc. shall provide 14 calendar days written notice to EEOC of the time, date, and location of such training and FAPS, Inc. understands that EEOC has the right to attend any training conducted by FAPS, Inc. pursuant to this Consent Decree. This training will have a special emphasis on laws prohibiting race discrimination, and retaliation. The training will address issues of stereotypes and biases against African Americans and will emphasize that stereotypes and bias may not be used as a basis for employment decisions or in the treatment of employees or applicants. The training will stress that FAPS, Inc. will make diligent, good faith efforts to recruit, sponsor and hire qualified African Americans. The training will discuss the partnership FAPS, Inc. has with vocational schools and the recruiting plan FAPS, Inc. will implement as part of this Consent Decree to obtain job applications from and to sponsor and hire African-American applicants, including the plan for job announcements, advertisements in print, radio, local cable television, internet, and other media sources, and outreach to community organizations that are likely to reach qualified African- American applicants to inform them of job opportunities at FAPS, Inc. The training will also include a review of the requirement that FAPS, Inc. provide a sponsorship letter to each and every African-American applicant and provide instruction on how to obtain a Waterfront Commission license for positions that require such a license. The training will also address FAPS, Inc.'s policies and procedures prohibiting employment discrimination, including policies and procedures prohibiting race discrimination, and retaliation, and describe the methods for reporting incidents of suspected race discrimination, and retaliation. The training will stress that officers, managers, supervisors and forepersons must set the tone for enforcement of FAPS, Inc.'s policies and procedures and that they must be especially careful not to engage in race discrimination, and that FAPS, Inc. will have a zero tolerance policy for incidents of race

discrimination, or retaliation by its officers, managers or supervisors. The training will also address how FAPS, Inc. will investigate reports, complaints or allegations of suspected race discrimination, and retaliation, and FAPS, Inc.'s policies and procedures for resolving such reports, complaints, or allegations. The training will identify the EEO Coordinator, explain the responsibilities of the EEO Coordinator, and identify the telephone number that can be used to report suspected incidents of race discrimination, or retaliation. The training will instruct the officers, managers, and supervisors that if they learn of or see possible incidents or reports of race discrimination, or retaliation, they are required to immediately report it to the EEO Coordinator. The training will stress that officers, managers and supervisors have an obligation to cooperate with the EEO Coordinator. The training will stress that retaliation against individuals who engage in protected activity under Title VII will not be tolerated, and that individuals who engage in race discrimination, or retaliation will be disciplined. FAPS, Inc. will also provide this training to all new officers, managers, supervisors, EEO Coordinator, and persons having human resources or hiring functions within 7 calendar days of the date the employee assumes such managerial or supervisory responsibilities. The training will be conducted by a third party instructor approved by EEOC, an outside vendor skilled in providing such training. FAPS, Inc. must maintain records identifying the name and job title of attendees at each training session and must provide a copy of such records to EEOC within 7 calendar days of each session.

G. MONETARY RELIEF

30. Within 10 calendar days of the entry of this Consent Decree, FAPS, Inc. will pay \$125,000 into a Claims Fund as defined below in paragraph 34.

31. Within 30 calendar days of the entry of this Consent Decree, FAPS, Inc. will pay \$25,000 into a Claims Fund (as defined below).

32. Within 270 calendar days of the entry of this Consent Decree, FAPS, Inc. will pay \$100,000 into a Claims Fund (as defined below).

33. Within 540 calendar days of the entry of this Consent Decree, FAPS, Inc. will pay \$100,000 into a Claims Fund (as defined below).

34. Claimants, those persons identified by EEOC, will receive shares of the Claims Fund as determined in the sole discretion of EEOC.

35. Within 10 calendar days of the entry of this Decree, and within 10 calendar days of each of the three subsequent payments made by FAPS, Inc. pursuant to paragraphs 31, 32 and 33, EEOC will provide FAPS, Inc. with a list of all claimants to whom the Claims Fund is to be distributed, along with the addresses and amounts to be distributed to each claimant. Within five calendar days of receipt of this list, FAPS, Inc. will send checks via certified mail to the claimants identified by EEOC, as provided by EEOC. FAPS, Inc. will issue an IRS Form W2 in connection with all backpay awards and an IRS Form 1099 in connection with all awards for compensatory and/or punitive damages.

36. Should any claimant fail to claim his or her award by cashing his or her check within 60 calendar days of issuance, such award will be redistributed in accordance with EEOC's instructions. FAPS, Inc. shall notify EEOC of any unclaimed funds 65 calendar days after such funds have been distributed and will distribute the unclaimed funds within 14 calendar days after receiving instructions on the redistribution from EEOC.

37. Should FAPS, Inc. fail to tender the payments in accordance with paragraphs 30-33:

- a. all payments which remain due shall become due and payable within 10 calendar days of such default, and,
- b. FAPS, Inc. will pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC caused by the non-compliance or delay of FAPS, Inc. and
- c. FAPS, Inc. will pay a penalty equal to 50% of the amount of the defaulted payment, and
- d. FAPS, Inc.'s failure to make timely and full payments in accordance with the schedule set forth in paragraphs 30-33 constitutes willful contempt of this Decree such that any and all fees incurred by EEOC in pursuing payment and other remedies shall be awarded;
- e. The disbursement of any penalty, interest, costs, and fees will be determined in the sole discretion of EEOC.

38. In the event that FAPS, Inc., for any reason whatsoever, including bankruptcy, reorganization, or dissolution, does not pay or cause to be paid any of the installment payments described herein, including any part thereof, on the date said payment is scheduled to be made and such non-payment continues for fourteen (14) business days (a "Default"), then, within seven (7) business days after EEOC provides written notice of Default, Gary LoBue, individually, and August LoBue, individually, agree to pay all amounts then due and owing under Section G of this Decree, without further act or deed by any person or entity, and without further notice to or order of the Court. Any bankruptcy, reorganization or dissolution of FAPS, Inc. or any successor or assign shall have no effect on the obligation of Gary LoBue,

individually, and August LoBue, individually, who agree, to make all payments due and owing under this Consent Decree. Nothing herein shall obligate Gary LoBue, individually, and August LoBue, individually, to make any payment before such payment would otherwise be due and owing under this Consent Decree.

39. Gary LoBue, individually, and August LoBue, individually, agree to subject themselves to the jurisdiction of the Court and agree that, in the event that the provisions of paragraphs 30-34 are breached, a final judgment will be entered against each of them for the remaining payment due and owing under the terms of the Decree and that they will not contest the enforceability of their obligations under this paragraph.

40. In the event that the provisions of paragraphs 30-34 are breached, Gary LoBue, individually, and August LoBue, individually, also agree that EEOC is not required to first enforce against any other entity any liability or obligation before seeking enforcement thereof against them.

41. In the event that the provisions of paragraphs 30-34 are breached, Gary LoBue, individually, and August LoBue, individually, acknowledge and agree that an action may be brought and maintained against them by EEOC to enforce any liability or obligation without the necessity of joining FAPS, Inc. or any other person or entity in such action. Gary LoBue, individually, and August LoBue, individually, agree to pay all costs and fees reasonably and necessarily incurred by EEOC in enforcing this provision.

H. HIRING

42. FAPS, Inc. shall make diligent, good faith efforts to hire qualified African-American candidates. It agrees to make every effort to hire African Americans over the next 5

years, in the following proportions of the total applicant pool beginning June 1, 2016 and as specified for each of the following years:

June 1, 2016 to December 31, 2016: 25% of newly hired warehouse workers will be African American;

January 1, 2017 to December 31, 2017: 25% of newly hired warehouse workers will be African American;

January 1, 2018 to December 31, 2018: 25% of newly hired warehouse workers will be African American;

January 1, 2019 to December 31, 2019: 25% of newly hired warehouse workers will be African American;

January 1, 2020 to June 1, 2021: 20% of newly hired warehouse workers will be African American;

43. Any person identified by EEOC as a Claimant who applies for employment with FAPS, Inc. will be offered the position first among similarly-qualified candidates for the same position.

44. In the event that FAPS, Inc. fails to achieve a hiring goal for a particular period, it shall present to EEOC proof that such failure was not the result of failure to use good faith efforts to recruit, sponsor, and hire African Americans and shall respond to EEOC's request for any additional information within 14 days of such request. Failure to respond to an EEOC request for additional information pursuant to this provision shall give rise to a presumption that the failure to meet the hiring goals was the result of failure to use good faith efforts to recruit, sponsor, and hire African Americans in violation of this Decree. If, after review of the evidence, EEOC seeks to challenge FAPS Inc.'s failure to meet an interim or final hiring goal, FAPS, Inc.

shall have the burden of proving by a preponderance of the evidence that they used good faith efforts.

45. On or before June 15, 2016, EEOC will provide to FAPS, Inc. a list of individuals for possible instatement at FAPS, Inc. (the "Hiring List"). The Hiring List shall include all eligible Claimants who indicate an interest in instatement at FAPS, Inc., along with the individual's address and/or phone number and resume.

46. Within 7 calendar days of receiving the Hiring List, FAPS, Inc. shall provide each individual on the Hiring List with a sponsorship letter and instructions regarding the procedure for obtaining a license from the Waterfront Commission.

47. Should FAPS, Inc. learn at any time that the contact information on the Hiring List is incorrect, incomplete, or ineffective, FAPS, Inc. shall notify the EEOC within 10 calendar days of learning the defect. The EEOC will then notify FAPS, Inc. of any corrected or updated contact information.

48. To the extent that FAPS, Inc. seeks to fill a new or vacant position, the individuals listed on the Hiring List who meet the minimum qualifications will be interviewed, sponsored, and if issued a license by the Waterfront Commission, will be given priority consideration for hire.

49. FAPS, Inc. will not be required to offer employment to an individual on the Hiring List when that individual affirmatively states that he or she is no longer interested in the job, when an individual rejects a job offer without a reasonable explanation, or if an individual's application for a license has been denied by the Waterfront Commission.

50. If FAPS, Inc. objects to or rejects an individual on the Hiring List, it will notify EEOC of its position and provide a written rationale and all documents which support its

position, including documents which reflect the qualifications of the person hired instead of the individual on the Hiring List, within 7 calendar days of making the rejection decision. If EEOC objects to FAPS, Inc.'s objection to or rejection of an individual, it will provide FAPS, Inc., with its objections and the reasons therefore in writing, as well as any documentation supporting its objections. Upon receiving such written notice of objections, FAPS, Inc. will reconsider the rejection of the individual and provide any additional information reasonably requested by EEOC regarding the decision within 7 calendar days of receiving notice of the objection. Any such disagreement regarding the qualifications of the individual on the Hiring List will be decided by the EEO Coordinator.

51. Within thirty (30) calendar days of the creation of the Hiring List and every thirty (30) calendar days thereafter until such time that the list is exhausted, FAPS, Inc. will submit to EEOC a report containing the names of all individuals on the Hiring List who, during that reporting period, were offered employment, the job title and location of the positions that they were offered, whether the offers were accepted or rejected, and, to the extent not already hired, the names of all claimants FAPS, Inc. determined not to be qualified or otherwise did not hire for the job titles sought, and the reason(s) they were not selected for the job title(s) sought.

52. FAPS, Inc. shall maintain complete and accurate records of all efforts to hire qualified African-American candidates, as set forth in paragraph 45, including at a minimum: (1) the identity of all applicants and candidates; (2) race; (3) application documents; (4) a copy of the Sponsorship letter given to each applicant and any correspondence to or from the Waterfront Commission, (5) number of African-American candidates hired. Such records shall be retained for the duration of this Consent Decree. Within thirty (30) calendar days of the date of the entry of this Decree, and every thirty (30) calendar days thereafter, FAPS, Inc. shall provide such

information to EEOC in electronic form as an Excel spreadsheet. EEOC retains the right to request production of this information at any time in its discretion.

I. MONITORING AND REPORTING

53. EEOC may monitor FAPS, Inc.'s compliance with the Consent Decree through unannounced inspection of FAPS, Inc.'s premises, records and interviews with employees.

54. Within 30 calendar days of the entry of this Consent Decree, FAPS, Inc. will begin to maintain and thereafter will continue to maintain records of all reports, complaints or allegations of race discrimination, and will comply with EEOC's record-keeping regulations. Every three months, FAPS, Inc. will provide EEOC with a report summarizing all reports, complaints or allegations of suspected race discrimination FAPS, Inc. has received. The report must be in affidavit form signed by the EEO Coordinator. The report, at a minimum, must contain the following information for each complaint, allegation or report of suspected race discrimination: the name, job title and work and personal addresses, phone numbers and email addresses for each person making the report, complaint or allegation; the name, job title and work and personal addresses, phone numbers and email addresses for each person engaging in the alleged discrimination; the name, job title and work and personal addresses, phone numbers and email addresses for each person subjected to the allegedly discrimination; the dates of the discrimination; a summary description of the alleged discrimination; the names, job titles and work and personal addresses, phone numbers and email addresses for each witness to the alleged discrimination; a summary of the steps taken during the investigation and dates those steps were taken including the names, job titles and work and personal addresses, phone numbers and email addresses for each person interviewed during the investigation; the results of the investigation; a

description of any disciplinary action taken and the dates of such disciplinary action. A final report will be sent to EEOC 42 calendar days before the date of the expiration of this Decree.

55. All materials required by this Decree to be sent to EEOC will be addressed to decreemonitor.nydo@eeoc.gov and to Rosemary DiSavino, Senior Trial Attorney, Equal Employment Opportunity Commission, Newark Area Office, Two Gateway Center, Suite 1703, Newark, NJ, 07102-5233, rosemary.disavino@eeoc.gov.

J. DURATION OF DECREE

56. This Decree will remain in effect for five (5) years from the date of entry.


57. If EEOC has notified FAPS, Inc. in writing not less than 14 calendar days before the expiration of this Decree that FAPS, Inc. is not in compliance with any term of this Decree, FAPS, Inc.'s obligations under this Decree will remain in effect until the Court determines that FAPS, Inc. is in compliance.

58. This Decree will not expire while any enforcement action concerning this Decree is pending.

59. The Court retains jurisdiction over this action during the duration of this Decree. The matter may be administratively closed but will not be dismissed during the duration of this Decree.

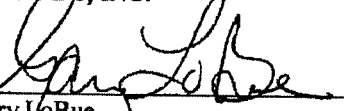
60. Unless otherwise specified, references to days shall refer to calendar days.

FOR PLAINTIFF



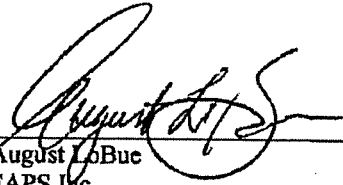
Jeffrey Burstein
Regional Attorney
EQUAL EMPLOYMENT OPPORTUNITY

FOR FAPS, INC.

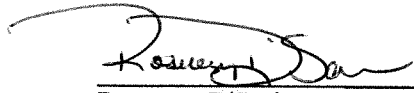


Gary LoBue
FAPS, INC.

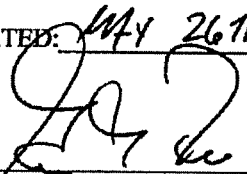
COMMISSION
New York District Office
33 Whitehall St., 5th Floor
New York, NY 10004
212-336-3707


August LoBue
FAPS, Inc.

DATED: May 26, 2016


Rosemary DiSavino
Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Newark Area Office
Two Gateway Center, Suite 1703
Newark, N.J. 07102
973-645-6430

DATED: May 26th, 2016


George Frino
DeCotiis, Fitzpatrick & Cole, LLP
Glenpoint Centre West
500 Frank W. Burr Blvd., Ste. 31
Teaneck, NJ 07666
Attorneys for FAPS, Inc.

DATED: May 26, 2016

DATED: May 26th, 2016

SO ORDERED, ADJUDGED AND DECREED

DATED: _____, 2016

John Michael Vazquez
United States District Judge

Exhibit A



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Newark Area Office

1 Newark Center, 21st Floor
Newark, NJ 07102-5233
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Newark Status Line: (866) 408-8075
Newark Direct Dial: (973) 645-4684
TTY (973) 645-3004
FAX (973) 645-4524

NOTICE TO ALL EMPLOYEES, APPLICANTS,
AND POTENTIAL APPLICANTS OF FAPS, INC.

This notice is being posted pursuant to a Consent Decree between the United States Equal Employment Opportunity Commission ("EEOC"), a federal agency charged with enforcing the nation's laws prohibiting employment discrimination, and FAPS, Inc. in resolution of a lawsuit, EEOC v. FAPS, Inc., U.S. District Court, District of New Jersey, Civil Action No. 2:10-cv-03095. In that lawsuit, EEOC alleged that FAPS, Inc. engaged in unlawful employment practices against African Americans and persons with disabilities. EEOC also alleged that FAPS, Inc.'s recruiting methods, including word of mouth recruiting, were discriminatory. In addition, FAPS, Inc. notified African-American applicants that no entry-level positions were open, when in fact they were, and falsely told African-American job applicants and potential applicants that applicants with a criminal record would be unable to obtain a registration card from the Waterfront Commission. Also, FAPS, Inc. improperly asked on its employment application whether the applicant has any physical, mental, or medical impairments that would prevent satisfactory performance of the job.

All persons are entitled to a workplace free from discrimination in any aspect of employment, including recruitment and hiring, because of an individual's race, color, sex (including pregnancy), religion, national origin, age, disability, or genetic information pursuant to federal law. Federal law also prohibits an employer from retaliating against an employee for objecting to or asserting complaints about discrimination or harassment, cooperating in the investigation or litigation of a charge of discrimination or harassment, participating as a witness or potential witness in an investigation or litigation of a charge of discrimination or harassment or otherwise exercising his or her rights under laws prohibiting discrimination, harassment and retaliation.

The terms of the Consent Decree require that FAPS, Inc.:

1. Revise and expand its job recruitment and hiring practices in order to reach African-American applicants in Essex and Union Counties and the surrounding area;
2. Refrain from telling African-American applicants and potential applicants that the Waterfront Commission is unlikely to issue a waterfront license to persons with a criminal record;
3. Explain to African-American applicants that they must obtain a license from the Waterfront Commission of the New York Harbor in order to be employed at FAPS;

4. Provide a sponsorship letter to African-American applicants and instructions on what they must do to obtain a license from the Waterfront Commission of the New York Harbor using the same criteria applied to non African-American applicants;
5. Ensure that there are no improper disability-related pre-employment inquiries made before a job offer is made;
6. Pay \$350,000 into a fund to be distributed to persons harmed by FAPS's discriminatory practices;
7. Make reasonably diligent, good faith efforts to recruit, and sponsor African-American candidates and make every effort to ensure that no less than 25% of its new hires every year over the next 4 years are African American;
8. Refrain from discriminating against any individual because of his or her race and from retaliating against any person who exercises his or her rights under federal anti-discrimination laws;
9. Appoint an Equal Employment Opportunity ("EEO") Coordinator to ensure FAPS, Inc.'s compliance with federal laws prohibiting employment discrimination and to receive, investigate and resolve complaints of race discrimination, disability discrimination, and retaliation;
10. Cooperate with the EEO Coordinator in the performance of the EEO Coordinator's duties;
11. Adopt, implement, and maintain written policies and procedures prohibiting race discrimination, disability discrimination, and retaliation, procedures for receiving and investigating complaints of race discrimination, disability discrimination or retaliation, and procedures to discipline managers, supervisors or employees who violate the policies;
12. Distribute a copy of the written policies and procedures prohibiting employment discrimination to all current and future employees;
13. Provide training to all current and future employees, managers and supervisors on federal laws prohibiting employment discrimination and retaliation;
14. Post this Notice and an EEO poster on federal anti-discrimination laws, and also to distribute a memo to all employees emphasizing FAPS, Inc.'s commitment to abide by all federal laws prohibiting employment discrimination, including laws prohibiting race discrimination, disability discrimination and retaliation.

If you have any complaints of discrimination, you may contact the FAPS, Inc. EEO Coordinator [insert name and telephone number] and/or:

Equal Employment Opportunity Commission
Newark Area Office
Two Gateway Center, Suite 1703
Newark, NJ 07102-5233
(800) 669-4000
www.eeoc.gov

This is an official legal notice and must remain posted for 5 years from the date of posting and may not be altered, defaced, or covered by any other material.

DATED: _____

Exhibit B

MEMORANDUM TO ALL FAPS EMPLOYEES

FAPS, Inc. is pleased to announce that we have resolved the dispute with the United States Equal Employment Opportunity Commission (EEOC) by way of an April 25, 2016 Consent Decree. The Company is and will continue to be dedicated to providing equal employment opportunity for all qualified applicants regardless of race. We will continue our outreach to trade schools in order to recruit African-American applicants.

Under the terms of the Consent Decree that FAPS has entered into with the EEOC, FAPS agrees to abide by all federal laws prohibiting employment discrimination, including laws which prohibit race discrimination and retaliation. The Company will continue to make diligent and good faith efforts to recruit, sponsor and hire qualified African Americans.

We have established a toll free hotline number to receive reports of suspected race discrimination and retaliation. That number is 800- . We have hired an EEO Coordinator that will assist us in complying with all anti-discrimination laws based upon our newly revised policy that you will soon be receiving.

We have also strengthened our training programs in order to ensure that fair hiring practices remain in place. Our workforce will all be trained in anti-discrimination laws on a regular basis.

Gary LoBue

August LoBue

Exhibit C

Exhibit C

RECRUITMENT PLAN OF FAPS INC.

1. FAPS, Inc. will make diligent, good faith efforts to recruit, sponsor and hire qualified African Americans. FAPS, Inc. shall at all times, use the same criteria for hiring African Americans as are used when hiring non-African Americans. FAPS, Inc.'s efforts to increase its hiring of qualified African-American applicants shall include:
 - a. Advertising available positions in publications and media targeted to the African American community, particularly in Essex and Union Counties;
 - b. Participation in at least one job/career fair annually in Essex and Union Counties.
2. FAPS, Inc. will continue to solicit applications from graduates of vocational and technical schools in Essex, Union and Hudson Counties that have automotive programs in an effort to recruit African Americans.
3. FAPS, Inc. will continue to engage and employ the Newark One Stop Work Centers for the purpose of actively recruiting qualified African Americans.
4. FAPS, Inc. will employ radio, local cable television, internet and other media sources and outreach, the office of the Mayor of the City of Newark and to community organizations that are likely to reach qualified African American applicants to inform them of job opportunities at FAPS, Inc. and instruct applicants on how they can obtain a Waterfront Commission license for positions that require such a license.
5. FAPS, Inc. shall make diligent, good faith efforts to hire qualified African-American candidates. It agrees to make every effort to hire African Americans over the next 5 years, in the following proportions of the total applicant pool beginning June 1, 2016 and as specified for each of the following years.
 - a. June 1, 2016 to December 31, 2016: 25% of newly hired warehouse workers will be African American;

- b. January 1, 2017 to December 31, 2017: 25% of newly hired warehouse workers will be African American;
 - c. June 1, 2018 to December 31, 2018: 25% of newly hired warehouse workers will be African American;
 - d. January 1, 2019 to December 31, 2019: 25% of newly hired warehouse workers will be African American;
 - e. June 1, 2020 to June 1, 2021: 25% of newly hired warehouse workers will be African American;
6. FAPS will refrain from the use of word-of-mouth recruiting as the primary means of recruiting and hiring job applicants.
7. FAPS will refrain from discouraging African American applicants and prospective applicants from completing the employment application process, including by not:
- a. Asking applicants for entry-level-positions to list all languages in which they are fluent other than English.
 - b. Making pre-hire inquiries about the physical, mental or medical condition(s), limitation(s) and/or disability of job applicants.
 - c. Telling African-American applicants that their application for a Waterfront Commission license will be denied if they have a criminal record.

Exhibit D

ANTI DISCRIMINATION POLICY

The Company is committed to the principle of equal employment opportunity pursuant to Title VII of the 1964 Civil Rights Act as amended and the New Jersey Law against Discrimination (LAD). Under no circumstances will the Company discriminate on the basis of sex, race, creed, color, religion, national origin, civil union or domestic partnership status, ancestry, age, pregnancy, marital or political status, affectional or sexual orientation, gender identity or expression, atypical heredity, cellular or blood trait, genetic information, disability (including AIDS or HIV infection) or handicap, veteran, and/or any other characteristic protected by Federal or State law. Decisions regarding the hiring, promotion, transfer, demotion or termination are based solely on the qualifications and performance of the employee or prospective employee. If any employee or prospective employee feels they have been treated unfairly, they have the right to address their concern with their supervisor, or if they prefer their Department Head or FAPS's EEO Coordinator, [insert name and telephone number].

In order to ensure a workplace free from discrimination, the Company has established a toll free telephone number for reporting any activity that reasonably and in good faith is cause to believe that a violation of this Policy has occurred. The telephone number is: _____. You may also pursue a claim pursuant to Section 1.3 of this Policy.

1.0 Race/Color Discrimination

Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.

Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color.

Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

A. Race/Color Discrimination & Work Situations. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

B. Race/Color Discrimination & Harassment. It is unlawful to harass a person because of that person's race or color.

Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work

environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker or someone who is not an employee of the employer, such as a client or customer.

C. Recruiting, Hiring and Advancement. Job requirements must be uniformly and consistently applied to persons of all races and colors. Even if a job requirement is applied consistently, if it is not important for job performance or business needs, the requirement may be found unlawful if it excludes persons of a certain racial group or color significantly more than others. Examples of potentially unlawful practices includes: (1) soliciting applications only from sources in which all or most potential workers are of the same race or color; (2) requiring applicants to have a certain educational background that is not important for job performance or business needs; (3) testing applicants for knowledge, skills or abilities that are not important for job performance or business needs.

Employers may legitimately need information about their employee's or applicant's race for affirmative action purposes and/or to track applicant flow. One way to obtain racial information and simultaneously guard against discriminatory selection is for employers to use separate forms or otherwise keep the information about an applicant's race separate from the application. In that way, the employer can capture the information it needs but ensure that it is not used in the selection decision.

Unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions. If the information is used in the selection decision and members of particular racial groups are excluded from employment, the inquiries can constitute evidence of discrimination.

1.1 Americans with Disabilities Act Compliance:

A. Policy. In compliance with the Americans with Disabilities Act (the "ADA"), the New Jersey Law Against Discrimination ("LAD"), and all other applicable laws, the Company shall not discriminate against employees or applicants for employment on the basis of a known disability/handicap that can be reasonably accommodated without undue hardship. This policy applies to all terms and conditions of employment, including but not limited to recruitment and hiring, placement, promotion, termination, reductions in force or layoffs, transfers, leaves of absence, compensation, benefits and training. To qualify as disabled/handicapped under the ADA and/or LAD, the individual must be able to perform the essential functions of the position with or without reasonable accommodation, and without creating a safety hazard to themselves, co-employees or the public.

B. Reasonable Accommodation. Any employee or applicant for employment, who

because of a known disability or handicap needs a reasonable accommodation to apply for employment or to perform the essential functions of his or her job, should contact the Human Resource Manager. The Company will make reasonable attempts to accommodate qualified employees with known physical or mental disabilities or handicaps, unless doing so would create an undue hardship on the Company. The Human Resource Manager shall engage in an interactive dialogue with disabled/handicapped employees to identify reasonable accommodations that do not create an undue hardship. Some examples of reasonable accommodations may include, but are not limited to, modifications to facilities, equipment and work procedures, auxiliary aides and reassignment to vacant positions for which the employee is qualified (including, but not limited to, possessing the necessary education, experience, training, skills, licenses, certificates or other job-related requirements). Employees who are reassigned to a vacant position shall receive the salary of their new position. Accommodations that create an undue hardship on the Company are not required. Accommodations that pose an undue hardship include, but are not limited to, those which are unduly expensive, extensive or disruptive, or which fundamentally alter the nature of the position. The Company is not required to offer permanent "light" duty, relocate essential job functions or provide personal items such as eyeglasses, hearing aids, wheelchairs, etc.

C. Handicap Accessible Facilities. The Company will endeavor to make every work environment handicap accessible and all future construction and renovation of facilities will be in accordance with the ADA, the LAD and applicable barrier-free Federal and State regulations.

D. Disability-Related Inquiries and Medical Examination

(i) Pre-Offer. Under no circumstances shall the Company require a job applicant to submit to a medical examination, respond to disability-related or medical inquiries or provide information concerning prior workers' compensation claims before making a conditional job offer.

(ii) Post-Offer. The Company may condition a job offer upon the satisfactory result of a post-offer medical examination or disability related inquiry if such a medical examination or disability-related inquiry is required of all employees in the given job category. Failure to hire based upon a post-offer medical examination must be job-related and consistent with business necessity. In such event, it must also be clear that no reasonable accommodation could be made or that same would impose an undue hardship upon the Company.

(iii) Employment. After employment begins, the Company will make a disability-related inquiry or require a medical examination only if job related and consistent with business necessity.

- 1) Medical examinations or disability-related inquiries may be required if an employee is having difficulty performing the essential functions of

his/her job effectively. If it is determined that such difficulty arises from a disability, the Company shall take appropriate measures to determine whether such disability may be reasonably accommodated without undue hardship on the Company.

- 2) Medical examinations or disability-related inquiries may also be required in the event that an employee becomes ill, injured or is a diagnosed with a condition which may materially affect job performance. If it is determined that such illness, injuries or diagnosis qualifies as a disability/handicap, the Company shall take appropriate measures to determine whether such disability/handicap may be reasonably accommodated without undue hardship on the Company.

Employees should also offer assistance, to the extent possible, to any member of the public who requests or needs an accommodation when visiting Company facilities. Any questions concerning proper assistance should be directed to Human Resource Manager.

E. Contagious or Life Threatening Illnesses Policy

(i) Policy. The Company encourages employees with contagious diseases or life-threatening illnesses, such as HIV/AIDS, Cancer, Hepatitis, or Heart Disease, to continue their normal work pursuits to the extent allowed by their condition. It is the policy of the Company that employees with infectious, long-term, life-threatening or other serious diseases may work as long as they are physically and mentally able to perform the essential functions of their job (with or without reasonable accommodation) without undue risk to their own health or that of other employees or members of the public. As in the case of other disabilities, the Company will make reasonable attempts to accommodate qualified employees with contagious diseases or life threatening illnesses unless doing so would create an undue hardship on the Company or pose a direct threat to the health of the employee, other employees or members of the public.

(ii) Employees who fail to disclose contagious illness(es) which would pose a direct threat to the health and safety of other employees or the public will be subject to the appropriate disciplinary action including termination.

(iii) Confidentiality of Medical Records. All medical information shall be treated confidentially. Managers and other employees have a responsibility to maintain the confidentiality of employee medical information. Anyone inappropriately disclosing such information shall be subject to disciplinary action. The Company will take reasonable precautions to protect such information from inappropriate disclosure including the following:

- Medical information may be disclosed with the prior written informed consent of the person who is the subject of the information.
- Information may be disclosed without the prior written consent of the person who is the subject of the information to qualified individuals for the purpose of conducting management audits, financial audits and program evaluations, but these individuals shall not identify, either directly or indirectly, the person who is the subject of the

record in a report or evaluation, or otherwise disclose the person's identity in any manner. Information shall not be released to these individuals unless it is vital to the audit or evaluation.

- Information may be disclosed to the Department of Health as required by State or Federal law.

Managers and other employees have a responsibility to maintain the confidentiality of employee medical information. Anyone inappropriately disclosing such information shall be subject to disciplinary action.

Employees with questions or concerns about contagious or life-threatening illnesses are encouraged to contact the Human Resource Manager.

1.3 HARASSMENT

A. **Policy.** The Company is committed to providing and maintaining a work environment that respects the dignity and worth of each individual. All employees shall be permitted to work in an environment free from all forms of unlawful discrimination and conduct which can be considered harassing, coercive or disruptive. Inappropriate workplace behavior and unlawful harassment of an employee by another employee, manager, supplier, volunteer or business invitee are prohibited. This policy applies to all harassment occurring in the work environment, whether on Company premises or in any employment-related setting. The purpose of this policy is to foster a work environment that is free from all forms of harassment, whether that harassment is because of race, creed, color, national origin, ancestry, age, religion, gender (including gender identity or expression), disability, marital status, affectional or sexual orientation, veteran status, domestic partner status, genetic information, atypical hereditary, cellular or blood trait or any other legally protected classification.

Violation of this harassment policy will subject employees to disciplinary action, up to and including immediate discharge.

B. **Sexual Harassment Defined.** Sexual harassment is defined as: unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct based on gender or sexual orientation when:

- i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or

offensive working environment.

Sexual harassment includes, but is not limited to:

- (1) Gender Harassment: Generalized gender or sexual orientation based remarks and/or behavior, whether or not meant to be derogatory or provocative. For example, use of stereotypes, offensive, insulting, derogatory or degrading remarks based on gender or sexual orientation, using sexually explicit language, gender or sex based pranks or jokes, and the display of sexually suggestive *objects* or pictures in the workplace.
- (2) Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances. For example, unwelcome or repeated flirtations, propositions or advances, unwelcome physical contact, whistling, leering, improper gestures, tricks or horseplay.
- (3) Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward. For example, demands for sexual favors in exchange for favorable or preferential treatment, such as a raise or a good performance evaluation.
- (4) Sexual Coercion: Coercion of sexual activity by threat of punishment. For example, threatening to take or taking adverse employment actions, such as a discharge, demotion or reassignment, if sexual favors are not granted.
- (5) Sexual Assault: Gross sexual imposition, such as touching, fondling, grabbing or assaulting.

C. Other Harassment Defined. For the purposes of this policy, other harassment is defined as verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, creed, color, national origin, ancestry, age, religion, gender, disability, marital status, affectional or sexual orientation, veteran status, domestic partner status, genetic information, atypical hereditary cellular or blood trait or any other legally protected classification, and that:

- a. Creates an intimidating, hostile or offensive work environment; or
- b. Unreasonably interferes with an individual's work performance.

Some examples of such harassment are: using epithets or slurs; mocking; ridiculing or mimicking another's culture, accent, appearance or customs; threatening, intimidating or engaging in hostile or offensive acts that focus on an individual's race, creed, color, national origin, ancestry, age, religion, gender, including gender identity or expression, disability, marital status, affectional or sexual orientation, veteran status, domestic partner status, genetic information, atypical hereditary cellular or blood trait or any other legally protected classification, including jokes and pranks; the displaying on walls, bulletin boards or elsewhere on Company premises, or circulating in the workplace, written or graphic material that

denigrates or shows hostility or aversion towards a person or group because of race, creed, color, national origin, ancestry, age, religion, gender, including gender identity or expression, disability, marital status, affectional or sexual orientation, veteran status, domestic partner status, genetic information, atypical hereditary cellular or blood trait or any other legally protected classification.

The Human Resource Manager of the Company is hereby designated the Anti-Harassment Officer. Persons who, by reason of circumstances, are uncomfortable directing a complaint to the Human Resource Manager may report same to his/her Department Head and/or any supervisor or manager with whom the employee feels comfortable making the complaint, or with FAPS's EEO Coordinator, [insert name], or by contacting our toll-free hotline [insert number], who will then bring the complaint to the appropriate authorities.

D. Harassment by Contractors and Vendors. Harassment of any employee, in connection with their work, by a contractor or vendor may also violate this Policy. Any employee who experiences harassment by a contractor or vendor, or who observes harassment of an employee by a contractor or vendor, should report such harassment in accordance with this Policy. Appropriate action will be taken against the contractor or vendor if the complaint is substantiated following an investigation.

E. Confidentiality. To the extent possible, all harassment complaints and investigations will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses. All parties involved in the proceedings will be advised to maintain strict confidentiality, from the initial meeting to the final decision, to safeguard the privacy and reputation of all involved. However, anonymity and confidentiality cannot always be guaranteed if a proper investigation is to be carried out and, where appropriate, action is to be taken against the alleged wrongdoer. Any report generated as a result of the investigation of a complaint filed under this policy shall be maintained as confidential except as to any Company personnel who need knowledge of the contents of the report in order to evaluate and/or carry out its recommendations, or as required by law.

F. No Retaliation. It shall be a violation of this policy for any employee to take reprisals against any person because she/he has filed a complaint, testified or assisted in any proceedings in this Policy. Threats, other forms of intimidation and/or retaliation against the complainant or any other party based on involvement in the complaint process may be cause for disciplinary action. There will be no discrimination or retaliation against any individual who files a good-faith harassment complaint pursuant to this Policy, even if the investigation ultimately produces insufficient evidence to support the complaint.

G. Training. To assure that employees understand this policy and their obligations, the Company shall periodically conduct anti-harassment training relating to this policy and conduct that potentially violates this policy.

1.3 Employee Complaint Investigation Procedures

Employees have the right to formally or informally report any statement, act, or behavior by a co-employee, supervisor, elected official or visitor that they believe to be in violation of this Policy and or to be improper.

A. **Reporting.** All employees are encouraged to report discrimination, harassment and/or other inappropriate behavior if they believe they are being harassed or if they observe the harassment of another. Notifying the appropriate personnel of any problem is essential to the success of this Policy. The Company cannot resolve a behavior problem unless it knows about it. Employees are also encouraged, whether directly or through a third party, to notify the alleged harasser that the behavior in question is offensive and unwelcome. However, failure to do so does not preclude filing a complaint. All employees have the right, and supervisors have a duty, to formally or informally report any and all statements, acts or behavior by a co-employee or supervisory personnel which are deemed or perceived by the affected employee to be an improper employment practice or to be a violation of this Policy. The reporting of such wrongful acts should be to the Human Resource Manager, the employee's Department Head and/or any supervisor or manager with whom the employee feels comfortable making a complaint, or with FAPS's EEO Coordinator, [insert name], or by contacting our toll-free hotline [insert number]. Employees who lodge a complaint can be assured that their complaint will be taken seriously, and will be promptly and thoroughly investigated.

B. **Responsibility of Supervisors.** In order to ensure the integrity of the work environment, supervisory personnel are required to ensure adherence to and compliance with this Policy. Upon observing or being informed of any form of discrimination, harassment or other improper behavior in violation of any of the Company's Policies, supervisors are required to take appropriate immediate action in response, including conducting an investigation, taking appropriate remedial action and informing employees of their rights under this Policy and applicable laws. Failure to report or adequately address such harassment, discrimination or improper behavior is a violation of this Policy and will result in disciplinary action.

The supervisor or Department Head must report all written or verbal complaints to the EEO Coordinator. Upon receipt, the EEO Coordinator will determine if the complaint was made pursuant to the General Anti-Harassment Policy, the Anti-Sexual Harassment Policy or Anti-Discrimination Policy. A file will be established including the written complaint, the investigation procedure followed and the response action plan.

C. **Contents of Complaints.** An initial complaint may be made orally or in writing. If the complaint is made orally, the individual to whom the complaint is made shall reduce same to a written document which shall, if it is deemed accurate, be signed by the complainant.

If the employee is reluctant to sign a written complaint, the EEO Coordinator or investigator will prepare written notes of the date, time and place of the complaint and the specific allegations. These notes will be read back to the employee who will be asked to affirm, preferably in writing the information's accuracy.

The complaint file must include the following information:

- (1) The name and department of the complainant;
- (2) The name and department of the charged party;
- (3) The nature and circumstances, in detail, of the alleged harassment, discrimination or improper behavior including but not limited to, the injuries or consequences suffered by the complainant, the names of any witnesses to such actions and the duration of the actions in question; and
- (4) Whether such behavior has been previously reported to a supervisor or other person, and if so, when and to whom.

Nothing in this section shall prevent the complainant from providing such other information or documents he/she believes are essential to the fair adjudication of his/her complaint.

D. Investigation. All complaints will be investigated by the EEO Coordinator or his or her designee as soon as possible and shall commence within thirty days after receiving the complaint. The alleged target will be notified once a formal complaint is filed. A finding of no probable cause as a result of an investigation does not necessarily establish that an accusation was made in bad faith. However, this policy shall not be used to intentionally bring frivolous or malicious charges against an employee. A harassment investigation shall be conducted in a timely manner and shall include, but not be limited to:

- (1) Interviewing the complainant;
- (2) Interviewing all potential witnesses, including those persons who may have knowledge of similar incidents;
- (3) Interviewing the charged party;
- (4) Reviewing municipal records for similar incidents involving the complainant and/or the charged party; and
- (5) Assessing the presence or absence of corroborative evidence for either party.

The EEO Coordinator will seek the advice of the Company Attorney and/or Labor Counsel if appropriate during the course of the investigation. The investigation should be conducted by the Company Attorney and/or Labor Counselor. The investigation should establish the frequency and nature of the alleged conduct and whether the complaint coincides with other employment events such as a poor performance evaluation. The investigation should also determine if other employees were subjected to similar misconduct. It is important to protect the rights of both the person making the complaint and the alleged wrongdoer.

E. **Response Plan.** Upon completion of the investigation, the investigator shall prepare a written summary of his/her investigation. The EEO Coordinator will render a decision within fourteen days after the investigation is complete.

- i. **No Corrective Action.** If the validity of a complaint cannot be determined or the complaint is groundless, the complaining employee should be notified in writing. Care should be taken to avoid being too specific, confrontational or accusatory and to avoid any language that might be construed as defamatory. A general statement is usually more appropriate that the claim was thoroughly investigated, but could not be sufficiently documented or confirmed to justify taking formal action. The employee should be assured that future complaints will be investigated and that the Company is committed to eliminating wrongful employment practices when they are found to exist. If the investigation reveals that the complainant intentionally and maliciously levied false charges against the alleged wrongdoer, the complainant must be notified of the seriousness of filing a false complaint, and the appropriate disciplinary penalty under the circumstances, up to and including termination.
- ii. **Corrective Action.** If the investigation reveals that the complaint is justified and substantiated, the EEO Coordinator will formulate a corrective action plan, as well as possible disciplinary action. The complaining employee will be notified, in writing that it appears that the complaint was justified and an appropriate response plan has been formulated. A copy of the response plan should be attached to the letter. The response plan should provide for appropriate remedial action to prevent a recurrence of the wrongful act or behavior. It may involve a loss of pay or even dismissal (subject to a Collective Bargaining Agreement)

F. **Confidentiality.** To the extent possible, all complaints and investigations will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses. All parties involved in the proceedings will be advised to maintain strict confidentiality, from the initial meeting to the final decision, to safeguard the privacy and reputation of all involved. However, anonymity and confidentiality cannot always be guaranteed if a proper investigation is to be carried out and, where appropriate, action is to be taken against the alleged wrongdoer.

G. **No Retaliation.** It shall be a violation of this policy for any employee to take reprisals against any person because she/he has filed a complaint, testified or assisted in any proceedings in this Policy. Threats, other forms of intimidation and/or retaliation against the complainant or any other party based on involvement in the complaint process may be cause for disciplinary action. There will be no discrimination or retaliation against any individual who files a good-faith harassment complaint pursuant to this Policy, even if the investigation ultimately produces insufficient evidence to support the complaint.

1.4 Continuing Workplace Training:

The Company will periodically require training for all employees for a variety of tasks related to employment practices and job duties, in accordance with applicable law.

Managerial and supervisory personnel will also update employees periodically by department meetings and memos that should address specific problems and concerns that may arise. Every effort will be made to encourage employee suggestions about ways to avoid employer/employee disputes and violations of employment rights.

Appendix A

FAPS, INC.

Employee Complaint Form

Date: _____

Attach additional sheets if necessary to fully complete all questions.

NAME: _____ **DEPARTMENT:** _____

TITLE: _____ **SUPERVISOR:** _____

Time period covered by this complaint: _____

Individuals who allegedly committed the acts being complained of:

Describe the nature and dates of the acts allegedly committed by each individual:

Identify all persons with knowledge of the complained conduct:

Are there any documents or other evidence that supports the occurrences described above?

If you previously complained about this or related acts to a supervisor or official, please identify the individual to whom you complained, the date of the complaint, and any action taken.

Have you missed any time from work or incurred any un-reimbursed medical expenses as a result of the alleged acts?

Are you afraid that someone may retaliate against you because you filed this complaint? If so, please identify the person(s) and indicate the reasons why you feel the person(s) may retaliate against you.

What is your requested remedy for this complaint?

ACKNOWLEDGMENT

The information provided above is true and correct to the best of my knowledge.

By: _____ DATE: _____

To investigate your complaint, it will be necessary to interview you, the accused party, and any witnesses with knowledge of the allegations or defenses. All persons involved in the investigation will be notified that (1) the complaint is confidential, (2) that any unauthorized disclosures of information concerning the investigation or retaliation could result in disciplinary action up to and including discharge.

I am willing to cooperate fully in the investigation of my complaint and to provide whatever evidence is deemed relevant.

By: _____ DATE: _____

Appendix B

**EMPLOYEE'S ACKNOWLEDGEMENT OF RECEIPT OF EQUAL
EMPLOYMENT OPPORTUNITY, ANTI-HARASSMENT, ANTI-
DISCRIMINATION POLICIES AND COMPLAINT PROCEDURES**

I understand that the Company and employees have a responsibility to create an atmosphere free of discrimination or discriminatory harassment. I understand that it is my responsibility to respect the rights of all other people employed with the Company, including, but not limited to, my co-workers and subordinates.

I understand that if I experience any discriminatory harassing behavior or believe that I have been treated in an inappropriate or discriminatory manner, I MUST immediately report the matter.

I understand that if I observe any harassing behavior, I MUST immediately report the matter.

I further understand that if I experience any discrimination or job-related discriminatory harassment, I MUST utilize the complaint procedure established for the purposes of preventing and correcting unacceptable workplace behavior.

By signing this form, I affirm that the complaint procedures for reporting harassment, discrimination or retaliation have been fully explained to me and that I understand them.

(To be placed in Employee's Personnel File)

Print Name _____

Signature _____

Date _____

Department _____